THE HONOURABLE SRI JUSTICE

A.GOPAL REDDY

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W.P.No.8891 of 1994

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Dt.06–04-2006

Between

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1.Duppatla Sreeramulu and others.

..petitioners.

and

1.Commissioner of Survey, Settlement &

Land Records, Govt. of A.P., Nampally Station Road,

Hyderabad and others.

..Respondents.

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ORDER:

This is an application filed under Article 226 of the Constitution for setting aside the proceedings No.B1/531/91 dated 04-01-1994 whereunder the Commissioner of Survey, Settlements and Land Records confirming the order passed by the Director of Survey and Settlements in Proceedings R.P.No.10/90 (B.II) dated 18-02-1981 who in turn confirmed the order passed by the Settlement Officer, Visakhapatnam in proceedings No.SR11(a)3/82/SKL dated 31-05-1989, rejecting the claim of the

petitioners for grant of Ryotwari Patta.

The factual back drop of the case relevant for the purpose of present proceeding may be stated thus:- On taking over of Tallasamudram Zamin Estate by the Government under the provisions of A.P. (A.A.) Estates (Abolition and Conversion into Ryotwari) Act, 1948 (hereinafter referred called as “Ryotwari Act”) on 12-01-1951 and introduction of settlement rights in the village with effect from 01-07-1961 petitioners were granted rough pattas under Section 11(a) of Ryotwari Act during the survey and settlement operations. On the land holders filing an application under Section 13(b) the pattas issued in favour of the petitioners were cancelled by the Settlement Officer, Visakhapatnam vide proceedings D.Dis.No.6264/69 dated 27-09-1969 with a direction to the petitioners to represent their claim as against the land holders in the proceedings under Section 15 (1) of the Ryotwari Act. After enquiry under Section 15(1) the Settlement Officer rejected the claim of the landholders for grant of Pattas and the same was confirmed by the Estates Abolition Tribunal. On such confirmation petitioners/claimants, 45 in number, filed claim petition under Section 11(a) for grant of pattas claiming that the lands are under their personal cultivation as per fair Adangal and 10(1) accounts. To prove their possession, 38th claimant filed lease deed to show that an extent of 6 acres in Sy.No.183 is in his enjoyment, which is on the side of Vamsadara river. Exs.P1 to P17 documents were filed in support of their claim apart from claimants were examined as P.Ws.1 to 7 and the landholder himself was examined as D.W.1 and Exs.R1 to R11 were filed. The Settlement Officer after taking into consideration the oral and documentary evidence and the Village Land Register prepared in the year 1953 by the Estate Manager who described the land as “Dry Banjar” held that the claimants/petitioners failed to prove that they have been lawfully inducted into the possession of the land prior to 01-07-1945. The classification of the land as AWD at the time of Ryotwari settlement as recorded in the Land Register and Adangal has to be continued. Without taking into the same and without verifying the Village Land Register the land was arbitrarily registered as Ryoti Dry and issued Ryotwari patta without enquiry under Section 11(a) and petitioners’ claim basing on such erroneous granting patta will not confer any right over the land. The order of the Settlement Officer, Visakhapatnam under Section 15(1) issued in SR 15(1) 22/61 SKL dated 05-06-1972 elaborately discussed the tenure of the land and concluded that the land was never cultivated.

The Survey Land Register prepared in 1930 described the land as “Gayalu” which was a Banjar land till the estate was taken over. Once the cancellation of pattas have become final on initiation of enquiry under Section 15(1), petitioners cannot lay any claim based on the rough pattas issued. Rejection of the claim of the land holders under Section 13(b) r/w 15(1) vide proceedings dated 05-06-1972 was confirmed by the Tribunal. When the petitioners failed to prove that land is Ryoti in tenure and has been handover possession prior to 01-07-1945. Since the pre-requisite condition for granting patta (1) he must be a ryot; (2) the land must be a ryoti; (3) it must have been included or ought to have been included in his holding and (4) land holder or some other person should not have a claim under any other provisions of the Act and petitioners failed to establish that they have occupied the ryoti land for a continuous period of 12 years shall also be deemed to be a ryot as per the definition of Section 3, namely, that they have holding the ryoti land; land is fit for the purpose of agriculture and they are paying rents to the land holder and rejected the same on 31-05-1989. On petitioners filing a revision, the Director of Settlements by his order dated 18-02-1991 rejected the revision filed under Section 44 of the Ryotwari Act on the ground that the land in question is not a ‘Ryoti’ land classification of land as ‘Ryoti’ by the Tahsildar was struck down by the collector, Srikakulam (vide Collector’s reference No.5713/89, M4 dated 10-08-1989) and once the lands are sand dunes adjoining the river Vamsadara the same cannot be treated as ryoti land and there is no recorded evidence filed before the Settlement Officer by the petitioners about their induction into land prior to 01-07-1945 and accordingly rejected the revision. On further revision filed by the petitioners before the Commissioner, Survey and Settlement met with the same fact whereunder the Commissioner dismissed the revision holding that the land is not a ryoti land and it is a sand dune abutting Vamsadara river and nobody can get a patta for it. Petitioners conceded that they were inducted into the land after 01-07-1945 therefore, they are not eligible for pattas under Section 11(a). Once they cannot get patta under Section 11(a) they also cannot get patta under 11 Pro because it is not a ryoti land required for the river Vamsadara. The rough pattas granted to the petitioners were cancelled in 1969, which have become final. The same cannot be questioned now and accordingly dismissed the revision.

Questioning the correctness of the same present writ petition is filed contending that

classification of the land change from Ryoti land to that of Dry Banjar/AWD, which was brought into light before the Director of Settlement and before changing the classification, no notice was given the petitioners and the petitioners never conceded that they have inducted into the land after 01-07-1945 as observed by the commissioner and in fact, they are inducted into the possession prior to 01-07-1945. Both the authorities erred in rejecting the claim of the petitioners on the premise that their possession is after the cut off date.

These factual aspects have not been denied in the counter filed by the respondents but resisted the claim of the petitioners on the ground that writ petitioners were entered in the schedule lands after 03-09-1948 with an agreement with the land holders to raise casurina as such the lands are not ryoti in pre-abolition period i.e. before 01-07-1945. Petitioners failed to prove that the lands are zeryothi in nature and that the lands are in their possession prior to 01-07-1945 nor they did not pay rent to the land holders for the lands under their possession prior to 01-07-1945. Since the lands registered as sand dune poramboke abutting to Vamsadara river and petitioners failed to prove that their possession of the schedule lands prior to 01-07-1945 and it is baseless that they have produced 17 cowl pattas. As the lands are abutting to Vamsadara river and required to maintain as such to ensure protection from floods, they are not entitled to ryotwari pattas and pleaded for dismissal.

Sri D.Prakash Reddy, learned senior counsel appearing for the petitioners contended that pattas granted in favour of the petitioners under Section 11(a) were cancelled while conducting enquiry under Section 15(1) on the claim made by the land holders. Once the claim of the land holders for granting patta has been rejected petitioners are entitled to restoration of pattas granted in their favour. He fairly concedes that since petitioners have not questioned the cancellation of pattas, but on rejecting the claim of the land holders they have applied for patta. Therefore, the Settlement Officer cannot come to a different conclusion for rejecting the claim of the petitioners once they are entitled to pattas earlier. When the petitioners filed Exs.P1 to P17 to support that they are in possession of the property on the relevant date. Ex.P1 cowl patta was not considered on the ground that it is not an authenticated document. If that be the case the finding of the Commissioner that the petitioners conceded that they were inducted into the land after 01-07-1945 is erroneous, as the

petitioners nowhere conceded that they have been inducted into possession after the cut off date. He lastly contends that the Director of Settlements rejected the revision based upon the struck off entries and classification of ryoti land was converted into Gayalu. The said correction was not notified and no notice as such was issued to the petitioners. Therefore, the same cannot be taken into consideration to reject their claim.

Learned Government Pleader for Revenue contends that once the lands, which were notified as “Gayalu” in the year 1930 and on estate being taken over by the authorities the same should be continued. Petitioners cannot claim benefit out of the said pattas and the cancellation of pattas have become final and not questioned by the petitioners. When all the authorities concurrently found that the petitioners are not entitled to pattas, this Court cannot interfere with the finding of fact.

Petitioners have not disputed the very granting of rough pattas under Section 11(a) during the survey and settlement operations and after estate is being taken over by the Government they were cancelled on land holders filing an application under Section 13(b) directing the petitioners to represent their claim against the land holders under Section 15(1) of the Ryotwari Act, and after due enquiry into the claim of the land holders under Section 15(1) their claim has been rejected which was confirmed in T.A.S.No.26/72 by Tribunal. It is not known whether the petitioners have participated in the said enquiry under Section 15(1) and put up any claim with regard to nature of the land and right possessed by them. In the additional counter filed by the M.R.O. before the Primary Tribunal, namely, Settlement Officer it was stated in para-4 that the claimant admitted that the lease deed was of the year subsequent to 01-07-1945. As such the claimant’s claim under Section 11(a) does not stand before the Settlement Officer, which has been noted by the Settlement Officer in his order. Once the pattas granted during the survey and settlement operations were cancelled by proceedings D.Dis.No.6264 dated 27-09-1969 on the ground that the lands were conceded on patta to the cultivating tenants without any enquiry in respect of the claim of the land holders as if they were undisputed ryoti lands and the pattas were confirmed by Deputy Tahsildar. Once the landholders filed an application under Section 13(b) enquiry is taken up under Section 15(1) and pattas granted earlier were cancelled on the instructions of the Director of

settlements and they were accordingly cancelled with a liberty to the ryots to represent their claim as against the land holders in the proceedings under Section 15(1) pending before the Settlement Officer. On such cancellation whether the petitioners have put up any claim or participated in the enquiry is not forthcoming from the record. On rejection of the claim of the land holders and on dismissal of the appeal preferred by land holders petitioners filed an application under Section 11(a) for grant of ryotwari patta, as they are cultivating tenants on the relevant date.

The person who claims patta under Section 11(a) has to satisfy the following conditions: that he must be a ryot in an estate with effect on and from the notified date; and the land should be ryoti land and should be properly included or ought to have been properly included in his holding before the notified dated and the land holder or some other person is not entitled to ryotwari patta under any others provisions of the Act.

Ryot who has been defined under Section 3 (15) of the A.P. (A.A.) Estates Land Act, 1908 is a person who holds for the purpose of agriculture ryoti land in an estate on condition of paying to the landholder the rent which is legally due upon it. As per explanation to the said definition a person who has occupied ryoti land for a continuous period of twelve years shall be deemed to be a ryot for all the purposes of the said act.

After considering the above provisions, the Settlement Officer gave a finding that combined agreement for cultivation of the claim land for a period of eight years entered into on 03-09-1948, the claimants entered into the schedule lands after 01-07-1945 as such they are not entitled to claim a ryotwari patta under Section 11(a) of the Ryotwari Act. As the petitioners entered into the land on 03-09-1948, the question of their payment of rent to the land holders prior to 01-07-1945 does not arise. Ex.P1 is the cowl patta granted by Senior Malkudar to Ch.V.S.Venugopalaswamy on 20-08-1941. All other exhibits pertain to cist receipts on the year 1981 and in some receipts no date is mentioned. What is the combined

agreement which was produced, whether it was produced during the course of enquiry under Section 15(1) or under the present proceedings has not been exhibited. They have not been marked in the present proceedings, on which basis the Settlement Officer rejected the claim.

In view of the same, the submission made by the learned counsel for the petitioners that on rejection of the claim of the land holders under Section 15(1) petitioners' patta certificates granted earlier has to be restored is an argument which it is difficult to comprehend. Petitioners having accepted that the cancellation of pattas have become final and having made an application for grant of pattas once again under section 11(a), the Settlement Officer is under obligation to make an enquiry in the light of finding recorded in the enquiry under Section 15(1) and accordingly he made detailed enquiry and rejected the claim of the petitioners. Whereas the Director of Settlements rejected the revision on the ground that the land in question is not a ryoti land as the classification of the land as ryoti by the Tahsildar was struck down by the Collector, Srikakulam in his proceedings dated 10-08-1989, which was subsequent to the rejection of the claim of the petitioners. The Director of Settlements has not gone into the finding recorded by the Settlement Officer, namely, the inductment of the petitioners into the suit schedule land after the cut off date and the nature of the land prior to such correction in the revenue entries. No doubt, in the notice issued to the petitioners cancelling the pattas granted in their favour in D.Dis.No.6264 dated 27-09-1969 the Settlement Officer directed that pending enquiry the land should be registered as 'assessed waste' and pursuant to the same, classification has been changed. The said order dated 27-09-1969 has not been questioned by the petitioners or by the land holders, as the case may be. On further revision, Commissioner rejected the same on the ground that the petitioners conceded that they have inducted into the land after 01-07-1945, therefore, they are not eligible to be granted patta and the land is abutting to Vamsadara river and it is not ryoti land and nobody can get patta on it. When admittedly the petitioners claim that cowl patta is of the year 1941, the Director rejected the same on the ground that the same is not an authenticated document and except that no evidence is recorded. Whether Ex.P1 can be relied upon in view of combined agreement for cultivation of the same land for a period of eight years entered into by the claimants on 03-09-1948 as per the findings recorded by the Settlement Officer, further, Ex.P1 on which petitioners lay

much emphasis is only a cowl patta covering six acres granted in favour of claimant No.38 and all other exhibits, which were marked before the Settlement Officer, are revenue receipts which is evident from the impugned order has not gone into by the Director of Settlements and no finding is recorded.

Having regard to the said fact both the revisional authorities failed to consider the claim of the petitioners in the light of the findings recorded by the Settlement Officer and has disposed of the revisions superfluously. Accordingly, the order passed by the Director of Settlements as confirmed by the Commissioner of Survey Settlements & Land Records is set aside and matter is remitted to the Director of Settlements to consider the claim of the petitioners in the light of findings recorded by the Settlement Officer; the effect of Ex.P1 in the light of combined agreement executed between the land holders and ryots dated 03-09-1948; the finding with regard to the nature of the land in the enquiry under Section 15(1) conducted on the land holders application and the effect of participation of the petitioners, if any, in the said enquiry and pass a speaking order after giving due opportunity to the petitioners within a period of three months and communicate the same to the petitioners.

The writ petition is accordingly allowed. No costs.

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A.GOPAL REDDY,J

06-04-2006

Murthy